

**DAVID M.C. PETERSON**  
California Bar No. 254498  
FEDERAL DEFENDERS OF SAN DIEGO, INC.  
225 Broadway, Suite 900  
San Diego, California 92101-5008  
Telephone: (619) 234-8467  
Email: [David\\_Peterson@fd.org](mailto:David_Peterson@fd.org)

Attorneys for Defendant Gonzalez

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

(HONORABLE MAGISTRATE PETER C. LEWIS)

I.

## STATEMENT OF FACTS<sup>1</sup>

According to the Statement of Facts attached to the Complaint filed on August 15, 2006, in the above entitled case Mr. Gonzalez was arrested on April 19, 2008, at the Calexico, CA West Port of Entry at the secondary inspection station. At the time of his arrest Mr. Gonzalez allegedly resisted and a melee ensued. There are numerous cameras set up to film the comings and goings at the port of entry.

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<sup>1</sup>The government has turned over no discovery to the defense. Mr. Gonzalez only has the complaint upon which to base his statement of facts.

II.

**THE COURT SHOULD ORDER THE GOVERNMENT  
TO PRESERVE EVIDENCE**

As of the date of filing, the government has provided defense counsel with no discovery in this case. Mr. Gonzalez makes the instant motion pursuant to Rule 16(d) and all other applicable rules, statutes and case law. His request is not limited to those items that the prosecutor at this time knows of, but rather includes all evidence that is in the care, control, custody, possession, or knowledge of any "closely related investigative [or other] agencies." See United States v. Bryan, 868 F.2d 1032 (9th Cir. 1989).

Mr. Gonzalez hereby requests to the full extent of Rule 16(a)(1)(E), the opportunity to inspect, copy, and test, as necessary, all other documents and tangible objects, including (but not limited to) photographs, books, papers, documents, data, fingerprint analyses, vehicles, buildings or places, information taken from computer hard drives, or copies of portions thereof, which are material to the defense or intended for use in the government's case-in-chief or were obtained from or belong to the defendant. See FED. R. CRIM. P. 16(a)(1)(E).

To that end, Mr. Gonzalez specifically requests that the video tapes from the port of entry that were taken of the incident involving his arrest be preserved. It is his understanding that these tapes are destroyed within seven days of the taping. Thus, Mr. Gonzalez requests that the government use all due diligence in making sure the tapes are preserved. Mr. Gonzalez requests that this court enter an order under Rule 16(d) requiring the government to **preserve** any video tapes taken on the day of Mr. Gonzalez's arrest from the Calexico, CA West Port of Entry that include Mr. Gonzalez on film, and requiring the government to **provide notice** to any government agencies and private contractors having custody or possession of this evidence.

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III.

## **CONCLUSION**

For the foregoing reasons, Mr. Gonzalez respectfully requests that the Court grant the above motion and enter the proposed order attached hereto.

Respectfully submitted,

Dated: April 23, 2008

/s/ DAVID M.C. PETERSON  
**DAVID M.C. PETERSON**  
Federal Defenders of San Diego, Inc.  
Attorneys for Mr. Gonzalez

**CERTIFICATE OF SERVICE**

Counsel for Defendant certifies that the foregoing is true and accurate to the best information and belief, and that a copy of the foregoing document has been caused to be delivered this day upon:

Courtesy Copy to Chambers

Copy to Assistant U.S. Attorney via ECF NEF

Copy to United States Probation Office

Copy to Defendant

Dated: April 23, 2008

/s/ DAVID M. C. PETERSON  
Federal Defenders of San Diego, Inc.  
225 Broadway, Suite 900  
San Diego, CA 92101-5030  
(619) 234-8467 (tel)  
(619) 687-2666 (fax)  
David\_Peterson@fd.org (email)